

IC 34-13-5

Chapter 5. Public Lawsuits for Testing Public Improvements of Municipal Corporations

IC 34-13-5-1

Exclusive applicability of chapter

Sec. 1. All public lawsuits shall be brought solely in conformity with and governed by the provisions of this chapter.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-2

Plaintiff; class actions; right of intervention

Sec. 2. (a) Plaintiffs in a public lawsuit may sue in their capacity either as citizens or taxpayers of the municipal corporation.

(b) A public lawsuit described in subsection (a) is a class suit (whether captioned as such or not), subject to the rights of intervention, the addition of parties, and the addition of other representatives of the same class, as is provided by law in other civil actions. Special appearances may be made in situations permitted by applicable law.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-3

Trial procedure

Sec. 3. The procedure in the trial court governing trial of the public lawsuit is the same as in other civil cases. When possible, the hearing on any interlocutory order shall be consolidated with the hearing on all other justiciable issues.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-4

Change of venue

Sec. 4. A change of venue from the judge may be permitted, but no change from the county may be permitted. When a change from the judge has been requested in accordance with the time limits prescribed by law, the affidavit or motion for the change shall be immediately certified to the supreme court:

(1) by the clerk of the trial court; or

(2) upon the failure of the clerk to act promptly, by verified copy of the motion presented to the supreme court by the moving party.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-5

Appointment of special judge

Sec. 5. (a) The rules regarding the selection of a special judge in civil cases do not apply. The supreme court shall appoint the special judge in a public lawsuit.

(b) A special judge is not required to reside in the county in which the case is pending or in any adjoining county.

(c) A special judge may be a regular judge of any circuit, superior, criminal, probate, juvenile, or other lower court of Indiana, any member of the Indiana bar, or any member of the court of appeals or the supreme court where the appointment can be validly made.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-6

Special reporter

Sec. 6. To expedite the trial of the case, either party may apply to the court for the appointment of a special reporter or firm of reporters to be the court reporter for the public lawsuit which the court may in its discretion approve. The moving party shall pay the cost, which may not be taxed as costs of the action.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-7

Interlocutory hearing

Sec. 7. (a) At any time before the final hearing in a public lawsuit, the defendant may petition for an order of the court that the cause be dismissed unless the plaintiff posts a bond with surety to be approved by the court. The bond must be payable to the defendant for the payment of all damages and costs that may accrue by reason of the filing of the lawsuit if the defendant prevails.

(b) A hearing shall be held on a petition described in subsection (a) in the same manner as the hearing on temporary injunctions under IC 34-26-1. If, at the hearing, the court determines that the plaintiff cannot establish facts that would entitle the plaintiff to a temporary injunction, the court shall set the amount of bond to be filed by the plaintiff in an amount found by the judge to cover all damage and costs that may accrue to the defendants by reason of the pendency of the public lawsuit in the event the defendant prevails.

(c) If the plaintiff does not file a bond with sureties approved by the court within ten (10) days after the order to do so is entered, the suit shall be dismissed.

(d) Either plaintiff or defendant may appeal an order to post or deny bond to the Indiana supreme court within ten (10) days by notice of appeal and a statement of error in the same manner as is provided in a petition for mandate or prohibition. The supreme court may:

- (1) stay the lower court order pending its own decision;
- (2) set a bond to be filed by the plaintiff;
- (3) modify the order of the lower court; or
- (4) enter its order as a final order in a case.

(e) If no bond is filed as provided in this section:

- (1) the public lawsuit shall be dismissed; and
- (2) no court has further jurisdiction of the public lawsuit or any other public lawsuit involving any issue that was or could have been raised.

(f) This section does not create, nor shall it be construed as creating, any additional cause of action on the part of any municipal

corporation, person, partnership, limited liability company, or corporation, unless the defendant is required to and does post bond.
As added by P.L.1-1998, SEC.8.

IC 34-13-5-8

Appeals

Sec. 8. Appeals from any final judgment in a public lawsuit shall be governed by, and taken in the same manner and with the same time limits, as appeals from interlocutory orders of a circuit or superior court under applicable law.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-9

Extensions of time; advance of trial or appeal

Sec. 9. Extensions of time, both in the trial court and in the Indiana supreme court, shall be granted only in extreme cases. The trial of a public lawsuit and the hearing of any appeal shall be advanced by the trial court and by the Indiana supreme court respectively, without request of either party, as expeditiously as is reasonably possible.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-10

Jurisdiction of trial court

Sec. 10. (a) A public lawsuit may not be brought, and no trial court has jurisdiction of any public lawsuit that is brought:

- (1) more than ten (10) days after the first publication required by law for the sale of bonds of a municipal corporation; or
- (2) in the case of a lease under IC 21-5-11, more than ten (10) days after the first publication of notice by any school building corporation for the sale of its bonds;

but in no case later than the time limited for bringing suit under applicable law.

(b) After a public lawsuit is commenced, no other lawsuit relating to the same subject matter may be commenced, and no trial court has jurisdiction of any subsequent lawsuit. No action may be brought except as provided in this chapter if it could have been the subject of a public lawsuit. This chapter does not diminish any right of intervention of any person, or the right of any person to become a named party in the public lawsuit.

(c) This section shall not be construed to extend any existing statute of limitations on the bringing of any lawsuit.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-11

Exhaustion of administrative remedies required before bringing public lawsuit

Sec. 11. As a condition precedent to bringing any public lawsuit, a plaintiff must first exhaust all the administrative remedies available to the plaintiff under applicable law, including but not limited to the

filing of a remonstrance where the issues raised could have been raised by the filing under applicable law. No plaintiff may commence a public lawsuit or be named as a party in the lawsuit unless one (1) of the plaintiffs has complied with this section.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-12

Matters to be heard in public hearing

Sec. 12. Where:

- (1) as a condition precedent to the construction, financing, or leasing of a public improvement, the municipal corporation is required to hold a public hearing preceded by public notice; and
- (2) the hearing is held and the notice is given in accordance with applicable law;

the plaintiff in a public lawsuit is not entitled to raise any issue in the public lawsuit that the plaintiff could have but did not raise at the hearing. Any matters or issues relating to any procedural matters that were not raised and could have been redone or corrected following the hearing are declared to be irregularities and not jurisdictional to the power of the municipal corporation or its governing body in connection with the construction, financing, or leasing.

As added by P.L.1-1998, SEC.8.